

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

JAN 11 2005

JENNY'S MEMORIAL BUSINESS  
ENTERPRISES, CHAMPIONS  
ENTERTAINMENT, and AHAOMA B. OHIA}

Michael N. Milby, Clerk of Court

*Plaintiffs,*

v.

CIVIL ACTION NO. H-03-5873

PEACOCK FILMS/1st MIRACLE  
PICTURES, and MOSHE BIBIYAN,

*Defendants.*

**ORDER OF DEFAULT**

Pending before the court is the Motion of Plaintiffs, Jenny's Memorial Business Enterprises (hereinafter, "JMBE"), Champions Entertainment ("Champions"), and Ahaoma B. Ohia ("Ohia") for Entry of Default and Default Judgment, (Docket Instrument No. 6) and Plaintiffs' Motion entitled "Reminder Document to Enter the Default Judgment Recommendation Made During Open Court Hearing on August 31<sup>st</sup>, 2004 at 10:00 A.M." (Doc. 14) The instant action was commenced on December 30, 2003 (Doc. 1), and returns for personal service of process made upon Defendants Peacock Films/1st Miracle Pictures ("Peacock Films") and Moshe Bibiyan ("Bibiyan") on January 13, 2004, were filed with the court on January 27, 2004. (Doc's 4 & 5, respectively.)

Since the service of process upon them, Defendants have not otherwise answered or defended the instant action and the court will order that Plaintiff's Motion for Entry of Default and Default Judgment (Doc. 6) be partially granted pursuant to Fed. R. Civ. P. 55, such that the Defendants are declared to be in default. However, the court will deny the motion with respect to Plaintiffs' request that the court enter default judgment as to the amount of \$30,000,000.00. (*See* Doc. 6, ¶ 9.) Plaintiffs have never provided the court with documents or detailed affidavits from which an accurate account of the amounts owed could be computed or shown, and it is generally the policy in this circuit that damages not be awarded by default judgment absent a hearing on damages unless such damages are liquidated or susceptible of mathematical computation. *See Frame v. S-H, Inc.*, 967 F.2d 194, 204 (5th Cir. 1992) (citing *United Artists Corp. v. Freeman*, 605

F.2d 854, 957 (5th Cir.1979)). Although the parties argue in their motion for default that the sum they seek as damages is “liquidated” (Doc. 6, ¶ 8), the court has not been referred to any section or clause of the parties’ “Distribution Contract,” (Doc. 1, Exh. A) that set aside a liquidated damage amount of \$30,000,000.00, and the court cannot determine why such an amount would be reasonable or how it would be computed from the information presented. Therefore, the court intends to hold a hearing to determine the appropriate amount of liquidated damages to be awarded as a default judgment unless the parties can file affidavits which clarify how they arrived at such an amount.

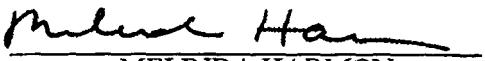
Accordingly, it is hereby

ORDERED that the Motion of Plaintiffs Jenny’s Memorial Business Enterprises, Champions Entertainment, and Ahaoma B. Ohia for Entry of Default and Default Judgment, (Doc. 6) is GRANTED IN PART, and DEFAULT IS ENTERED AGAINST DEFENDANTS Peacock Films/1st Miracle Pictures and Moshe Bibiyan, but the request for Entry of Default Judgment is DENIED; it is further

ORDERED that the PARTIES MUST APPEAR BEFORE THE COURT FOR A HEARING to determine an accurate amount of damages for purposes of granting a default judgment; a hearing is set for the for the 28<sup>th</sup> day of January, 2005, at 2:00 p.m. in Courtroom 9C, Bob Casey Federal Building, 515 Rusk Avenue, Houston, Texas; and, it is further

ORDERED that the Clerk is to mail a copy of this order to the named Defendants at the addresses at which they were served.

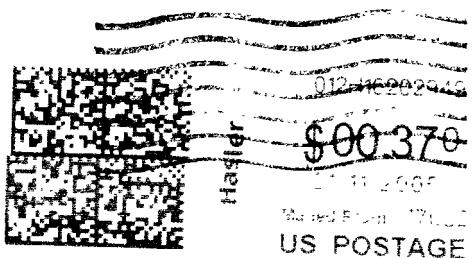
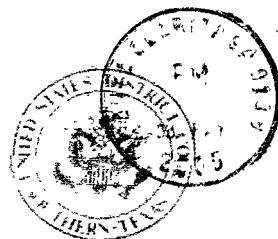
SIGNED at Houston, Texas, this 10<sup>th</sup> day of January, 2005.

  
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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE

CLERK  
STATES DISTRICT COURT  
ERN DISTRICT OF TEXAS  
ST OFFICE BOX 61010  
USTON, TEXAS 77208

OFFICIAL BUSINESS

*Return*



*no longer*

~~AT THIS ADDRESS 3439 W. CATTUENGA BLVD.~~

~~HOLLYWOOD, CA 90068~~

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